

**ADORNO & YOSS**

A LIMITED LIABILITY PARTNERSHIP  
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 FORT LAUDERDALE, FLORIDA 33301-4217  
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JAN DOUGLAS ATLAS

EMAIL: [JDA@ADORNO.COM](mailto:JDA@ADORNO.COM)

January 5, 2010

**VIA CERTIFIED MAIL AND FACSIMILE**

Mr. Irving H. Picard, Trustee  
 c/o Baker & Hostetler LLP  
 Attn: Claims Department  
 45 Rockefeller Plaza  
 New York, NY 10111

**Re: Bankruptcy Case No. 08-1789 (BLR) / Opposition to Trustee's Denial  
of Claim Filed by William Matz Revocable Trust / Claim No. 3590**

Dear Mr. Picard:

This letter is in opposition to the Notice of Trustee's Determination of Claim dated December 8, 2009, denying the claim of William Matz Revocable Trust ("Claimant") pursuant to the Securities Investor Protection Act, 15 U.S.C. 78aaa, *et seq.* ("SIPA").

SIPA "is remedial legislation. As such it should be construed liberally to effect its purpose." *In re First State Securities Corp.*, 34 B.R. 492, 496 (Fla. 1983) (quoting *Tcherepnin v. Knight*, 389 U.S. 332 (1967)). "The purpose is the protection of the insolvent brokers' customers." *Id.* at 496. In *Securities and Exchange Commission v. F. O. Baroff Co., Inc.*, 497 F.2d 280 (2d Cir. 1974) [hereinafter, "F. O. Baroff Co."], the Second Circuit gave a detailed analysis of SIPA's legislative history and intent. *Id.* at 281. Specifically, the court stated that:

[t]he object of that statute, and the function of the Securities Investor Protection Corporation (SIPC) it created, is to protect the public customers of securities dealers from suffering the consequences of financial instability in the brokerage industry...Once a broker or dealer is found to be on the brink of collapse or in danger of failing to meet its obligations to its customers, a trustee is appointed for liquidation of the business. The firmS [sic] clients are cushioned (within limits) from personal loss through a special fund collected by SIPC from all securities dealers registered under the 1934 Securities Exchange Act...But the Securities Investor Protection Act allows only those who meet its definition of a 'customer' to share in this assurance.

{KCARDOSO/216613.0001/N0804170\_1}

CALIFORNIA FLORIDA GEORGIA MASSACHUSETTS MISSOURI NEW JERSEY NEW YORK TEXAS WASHINGTON, D.C.

ATTORNEYS ADMITTED SOLELY IN THE JURISDICTION WHERE LISTED OFFICE IS LOCATED, UNLESS OTHERWISE NOTED

Mr. Irving H. Picard  
January 5, 2010  
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*F. O. Baroff Co.*, 497 F.2d at 281. Citing the House of Representatives, the court went on to state that “[t]he primary purpose of [SIPA] is to provide protection for investors if the broker-dealer with whom they are doing business encounters financial troubles.” *Id.* at 283. In furtherance of SIPA, SIPC, “an independent corporation established by Congress,” was created, “to reinstill[] confidence in the securities markets” by “protect[ing] investors from the effects of chronic instability in the securities industry.” *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411 F. Supp. 411, 412-13 (D.C. Mass. 1976). SIPC’s “prime responsibility [is] to establish...a substantial reserve fund which...provide[s] protection to investors in the event a brokerage firm collapse[s].” *Id.* at 413.

SIPA defines the term “customer” of a debtor as:

**any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer.** The term “customer” includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities...

15 U.S.C.A. § 78lll(2) (emphasis added).

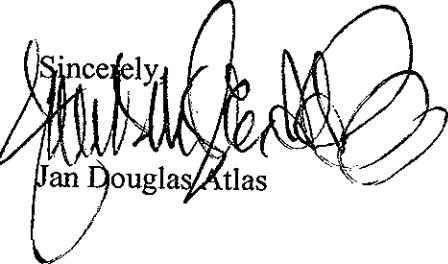
The United States District Court for the Southern District of New York further discussed the definition of the term “customer” in *Securities and Exchange Commission v. Kenneth Bove & Co., Inc.*, 378 F. Supp. 697 (S.D.N.Y. 1974) [hereinafter “Kenneth Bove & Co.”]. The court found that in order to be considered a “customer” under SIPA, “the claimant must have entrusted his securities to the debtor in liquidation,” and have been “on account of securities received, acquired, or held by the debtor.” *Id.* at 699. Claims pursuant to SIPA are “grounded on possession of identifiable securities by the broker.” *Id.* Under SIPA, **“the preferential protection is accorded to a person who can trace and identify the...funds in the hands of the stockbroker.”** *Id.* (emphasis added).

In this case, Claimant’s funds are traceable and can be identified as being in the direct control of Bernard L. Madoff Investment Securities LLC. Claimant transferred and placed the amount of \$1,000,000.00 (the “Investment”) with Emerald Asset Advisors, LLC which purchased with the Investment a limited partnership interest in the Rye Select Broad Market Fund, LP (“Rye Fund”) under the authority of the Rye Fund’s General Partner, Tremont Partners, Inc. (“Tremont Partners”), a subsidiary of Tremont Group Holdings, Inc. Attached hereto are copies of supporting documents evidencing the Investment in the limited partnership interest (the “Securities”). Tremont Partners placed all of the assets of the Rye Fund with Bernard L. Madoff Investment Securities LLC. The final account statement, attached hereto,

Mr. Irving H. Picard  
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reflects Securities owed to Claimant in the amount of \$1,051,830.88. Claimant is clearly a "customer" under SIPA and should be afforded its protection. The fact that Claimant's funds were not given directly from Claimant to Bernard L. Madoff Investment Securities LLC is of no consequence. As an investor, Claimant should be protected from the effects of the instable securities industry and, more specifically, the collapse of Bernard L. Madoff Investment Securities LLC, in which Claimant's assets were invested through its agents, Emerald Asset Advisors, LLC, The Rye Fund, and Tremont Partners. To deny Claimant's claim would directly contravene the legislative intent of SIPA. Accordingly, Claimant respectfully requests that the denial of its claim be reversed; that its claim be granted; and that it be afforded the protection to which it is entitled pursuant to SIPA.

Sincerely,

  
Jan Douglas Atlas

JDA/cab

Enclosure

cc: United States Bankruptcy Court  
for the Southern District of New York (by mail only)

William Matz Revocable Trust

{KCARDOSO/216613.0001/N0804170\_1}

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A Division of TruStone Group Holdings, Inc.

BNY ALTERNATIVE INVESTMENT  
SERVICES, INC.  
101 Barclay Street  
20th Floor West  
New York, New York 10286  
USA

William Matz Rev Trust  
3482 Derby Lane  
Fort Lauderdale, FL 33331  
USA

## CLIENT STATEMENT

A/C Number: 00-1200-800002678

Period Beginning: 01-Nov-2008

Period Ending: 30-Nov-2008

Fax Number:

E-Mail:

### PERFORMANCE SUMMARY

Security	% Change	
	Period to Date	Year to Date
Rye Select Broad Market Fund, LP	1.71%	6.15%

### PERIOD ACTIVITY

Security	Net Opening Capital	Contribution	Net Income / (Loss)	Withdrawals / Trans / ReReg	Net Closing Capital
Rye Select Broad Market Fund, LP	1,034,193.66	0.00	17,637.22	0.00	1,051,830.88
<b>Totals</b>	<b>1,034,193.66</b>	<b>0.00</b>	<b>17,637.22</b>	<b>0.00</b>	<b>1,051,830.88</b>

### DISCLOSURE NOTES

- % Change results are Net of all fees.
- Year To Date change is based on Calendar Year which ends on December 31st.
- All values are in USD.
- This information is not intended to be used for tax reporting or planning.
- This information is unaudited. Audited statements are issued upon conclusion of the fiscal year end audit.
- The Fund's net asset value has been calculated on the basis of market value information with respect to the Fund's portfolio obtained from third parties, including independent pricing vendors, the Fund's manager and administrators of funds in which the Fund may have invested. BNY-AIS does not give any assurances with respect to the accuracy of such market value information.
- Past performance as described herein is not necessarily indicative of future results.
- The Bank of New York acts as custodian with respect to cash. With respect to the portfolio's investments, such investments have been and will continue to be custodied for the benefit of the portfolio at Bernard L. Madoff Investment Securities LLC, 885 Third Avenue, New York, NY, 10022.
- Additional information is available at [www.ryeselectfunds.com](http://www.ryeselectfunds.com).

### INVESTOR INQUIRIES

Telephone: 212.815.4090 Facsimile: 212.644.6669 Email: [AISOnline\\_NY@bankofny.com](mailto:AISOnline_NY@bankofny.com) Web: [www.fundadmin.com](http://www.fundadmin.com)

As you requested copies of this statement have been sent to:

Allan Budelman  
Denise Karp  
Ms. Pamela Palmer



BNY ALTERNATIVE INVESTMENT  
SERVICES, INC.  
101 Barclay Street, 20th Floor West  
New York, New York 10286  
USA

Fax: 954-385-9624  
E-mail: abudelman@emeraldsasset.com

02-Apr-2008

Allan Budelman  
2843 Executive Park Drive  
Weston, FL 33331  
USA

#### CONFIRMATION OF CASH RECEIPT

Dear Investor,

We are pleased to confirm the receipt of your proceeds on behalf of Rye Select Broad Market Fund, LP. The details below confirm the specifics of the transaction. Your proceeds will not be invested until all requisite documentation has been received in good order and your eligibility as an investor in Rye Select Broad Market Fund, LP has been confirmed.

Please take a moment to review this confirmation to ensure that all details pertaining to this transaction and your account are correct. If any discrepancies are identified please contact our Investor Services Group as described below.

#### ACTIVITY CONFIRMED

##### Details

Action	Cash Received
Date Received	11-Mar-2008
Amount Local	500,000.00 USD
Amount Base	500,000.00 USD

##### To Be Applied

Dealing Date	01-Apr-2008
Security	Rye Select Broad Market Fund, LP

#### ACCOUNT INFORMATION

Acct. Name	William Matz Rev Trust
Acct. Number	01-2008-00002678
Telephone	954-389-3347
Facsimile	--
Email	

#### INVESTOR INQUIRIES

Telephone	212.815.4090
Facsimile	<u>212.644.6669</u>
Email	<a href="mailto:AISOnline_NY@bankofny.com">AISOnline_NY@bankofny.com</a>
Web	<a href="http://www.fundadmin.com">www.fundadmin.com</a>



BNY ALTERNATIVE INVESTMENT  
SERVICES, INC.  
101 Barclay Street, 20th Floor West  
New York, New York 10286  
USA

Fax: 954-385-9624  
E-mail: abudelman@emeraldasset.com

16-Apr-2008

Allan Budelman  
2843 Executive Park Drive  
Weston, FL 33331  
USA

#### TRADE CONFIRMATION

Dear Investor,

We are pleased to confirm your investment into Rye Select Broad Market Fund, LP. The details below confirm the specifics of the transaction executed on your behalf.

Please take a moment to review this confirmation to ensure that all details pertaining to this transaction and your account are correct. If any discrepancies are identified please contact our Investor Services Group as described below.

#### ACTIVITY CONFIRMED

Security	Rye Select Broad Market Fund, LP		
Details		Contributions	
Action	Buy	Gross Contribution	500,000.00
Dealing Date	1-Apr-2008	Sales Charge/Interest Payment	0.00
Base Currency	USD	Net Contribution	500,000.00
Lot Ref. Number			

#### ACCOUNT INFORMATION

Acct. Name William Matz Rev Trust  
  
Acct. Number 01-2008-00002678  
Telephone 954-389-3347  
Facsimile --  
Email

#### INVESTOR INQUIRIES

Telephone 212.815.4090  
Facsimile 212.644.6669  
Email [AISOnline\\_NY@bankofny.com](mailto:AISOnline_NY@bankofny.com)  
Web [www.fundadmin.com](http://www.fundadmin.com)



SUNTRUST<sup>®</sup>

Your monthly Signature Advantage statement for March, 2008  
Customer  
WILLIAM D MATZ  
SUSAN R MATZ  
Your checking account  
0385855572626  
Your investment account  
F9R191264

## Your Signature Advantage check images

WILLIAM D MATZ 445 DEBRY LN PORT LAUDERDALE, FL 33311-3399	3/4/08 697 4321551 WEEKEND
Pay to the order of <u>Rye Select Broadmarket \$ 500,000 -</u> <u>For Standard Thread</u> Dollars <b>500,000</b>	
SUNTRUST ACH PAYMENT	
For 10631021521038585572626 0697 000500000000	

You are here  
Billboard  
Your SunTrust accounts summary  
Your Signature Advantage cash summary  
Balancing your Signature Advantage account



BNY ALTERNATIVE INVESTMENT  
SERVICES, INC.  
101 Barclay Street, 20th Floor West  
New York, New York 10286  
USA

Fax: 954-385-9624  
E-mail: abudelman@emeraldasset.com

03-Jun-2008

Allan Budelman  
2843 Executive Park Drive  
Weston, FL 33331  
USA

#### CONFIRMATION OF CASH RECEIPT

Dear Investor,

We are pleased to confirm the receipt of your proceeds on behalf of Rye Select Broad Market Fund, LP. The details below confirm the specifics of the transaction. Your proceeds will not be invested until all requisite documentation has been received in good order and your eligibility as an investor in Rye Select Broad Market Fund, LP has been confirmed.

Please take a moment to review this confirmation to ensure that all details pertaining to this transaction and your account are correct. If any discrepancies are identified please contact our Investor Services Group as described below.

#### ACTIVITY CONFIRMED

##### Details

Action	Cash Received
Date Received	28-May-2008
Amount Local	500,000.00 USD
Amount Base	500,000.00 USD

##### To Be Applied

Dealing Date	01-Jun-2008
Security	Rye Select Broad Market Fund, LP

ACCOUNT INFORMATION	
Acct. Name	William Matz Rev Trust
Acct. Number	01-2008-00002678
Telephone	954-389-3347
Facsimile	--
Email	

INVESTOR INQUIRIES	
Telephone	212.815.4090
Facsimile	<u>212.644.6669</u>
Email	<u>AISOnline_NY@bankofny.com</u>
Web	<u>www.fundadmin.com</u>

\* Client wired monies directly to Rye, do not have copies of wire transfer or statement



# Fax

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**To:** Lorraine Lasek                    **From:** William D. Matz  
**Fax:** 954-767-0811                    **Pages:** One (1) including cover page  
**Re:** Wire                                **Date:** 5-27-08

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**Urgent**     **For Review**     **Please Comment**     **Please Reply**     **Please Recycle**

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Please wire \$500,000 from the following account

William D. Matz

Account # 370-007-7

TO:

Bank of New York

One Wall St., New York, NY 10286

ABA # 021000018

Account Name: Rye Select Broad Market Fund, LP

Account # 8900631473

Should you have any questions or require additional information, please contact my assistant, Annette Pappas at 954-452-5000 ext. 208.

William D. Matz